

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN GABRIEL WATER COMPANY (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division to Increase Revenues by \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, and \$3,079,900 or 6.4% in 2006, and

A.02-11-044

In the Matter of the Application of San Gabriel Valley Water Company (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division By \$5,662,900 or 13.1% in July 2006, \$3,072,500 or 6.3% in July 2007, and \$2,196,000 or 4.2% in July 2008.

A.05-08-021

**RESPONSE TO SAN GABRIEL WATER COMPANY’S PETITION FOR  
MODIFICATION OF DECISION 05-08-041  
OF THE OFFICE OF RATEPAYER ADVOCATES**

Pursuant to Rule 47(f) of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the Office of Ratepayer Advocates (“ORA”) files this Response to San Gabriel Water Company’s (“San Gabriel”) Petition for Modification of Decision (“D.”)05-08-041 regarding consolidation of the rehearing of D.04-07-034 with the new general rate case, Application (“A.”)05-08-021. Decision 05-08-021, which granted a limited rehearing of San Gabriel’s last Fontana District general rate case decision, D.04-07-034, was issued on August 25, 2005.

The Commission should reject San Gabriel's Petition for Modification because San Gabriel's Petition does not comply with the express terms of Rule 47(b). In addition, San Gabriel's contention that D.05-08-041 improperly allowed the City of Fontana to request the removal of ALJ Patrick from the rehearing proceeding, is inane and erroneous because problems in ALJ Patrick's initial decision (D.04-07-034), made the rehearing necessary in the first place.

The proper approach is to sequentially schedule the consolidated proceedings so that the rehearing process will be complete and a new rate case application prepared based on the outcome of the rehearing before the new rate case application review begins. San Gabriel's new general rate case application will necessarily need to be significantly modified once the rehearing is complete because many of the underlying assumptions and recorded data in the new application are predicated on the Commission's findings in D.04-07-034. Since the rehearing will revisit many of those findings, the existing new rate application, (which is substantially based on the soon to be revised numbers in D.04-07-034), is inherently defective. It would be counterproductive for ORA (or other intervenors) to devote significant time and resources to reviewing San Gabriel's new rate case application when much of it will have to be revised and amended by the rehearing decision. ORA argued these same points in its Protest filed September 14, 2005.

Another important issue that San Gabriel's Petition for Modification raises is the question of customer notice. Given the outcome of D.05-08-021, whatever notice San Gabriel will give its customers regarding its new rate case will have to be significantly modified once the rehearing decision has been issued and the general rate case application revised. Simply to minimize customer confusion, the Commission should deny San Gabriel's petition.

## **I. INTRODUCTION**

The Commission issued the rehearing decision in late August of 2005, which complicated the new general rate case substantially. Additionally, in San Gabriel's last rate case, the Commission ordered an audit to be completed before the next rate case.

The Water Division completed this audit in early September 2005 and uncovered alleged evidence of misconduct by San Gabriel.

Because of the rehearing, the new rate case is invalidated and will need to be substantially revised. And the audit has raised more questions on the reasonableness of San Gabriel's revenue requirement. At the time, the Commission issued its decision in San Gabriel's Los Angeles Division's general rate case, the audit had not been completed. Therefore, an Order to Institute an Investigation ("OII") is also necessary because the recently adopted rates in the Los Angeles district may need to be adjusted if the Commission adopts the findings and recommendations of the audit report. ORA first recommended the Commission issue an OII on these issues in its Protest filed on September 14, 2005.

The following is ORA's proposed calendar which will address many of the complications of this rehearing and new rate case application:

OII is approved (Fall 2005)-	OII begins
Late December 2005-	Rehearing ends
February 2006-	Rehearing Decision
April 2006-	San Gabriel's Revised Application

## **II. SAN GABRIEL VIOLATES RULE 47(b) BY NOT PROVIDING SPECIFIC WORDING TO CARRY OUT REQUESTED MODIFICATIONS**

Rule 47(b) states: "A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision."

Here, San Gabriel seeks modification of Ordering Paragraph 3 of D.05-08-041, which provides as follows: "The limited rehearing ordered herein shall be consolidated with San Gabriel's next General Rate Case for its Fontana Division, scheduled to be filed in July 2005." San Gabriel petitions for a modification of Ordering Paragraph 3, "so that the limited rehearing of its Test Year 2003 GRC will not be consolidated with the new Test Year 2006 GRC, A.05-08-021, but instead will be heard separately."

While San Gabriel's Petition for Modification makes a recommendation about how D.05-08-041 should be changed, it violates the requirements of Rule 47(b) by not providing specific wording to fulfill the requested modifications to the decision. The Commission should reject San Gabriel's Petition for Modification outright because it does not comply with the requirements of Rule 47(b).

### **III. ASSIGNING THE REHEARING TO A NEW ALJ ALLOWS FOR A NEW IMPARTIAL HEARING OF THE ISSUES**

San Gabriel argues that the rehearing process will suffer if ALJ Patrick's familiarity and experience with the proceeding are not allowed to inform the rehearing process. ALJ Patrick was the assigned ALJ for A.02-11-044 and D.04-07-034, which is now subject to rehearing. The consolidation of the rehearing and the new rate case with ALJ Barnett presiding over the consolidated proceeding provides an opportunity to rehear the issues of A.02-11-044 with a new decision-maker.

The decision granting rehearing strongly intimates that a fresh perspective is needed on many of the issues in the proceeding. D.05-08-041 grants a limited rehearing on: 1) whether San Gabriel met its burden of proof regarding its request for a rate increase in its last rate case application; 2) whether San Gabriel's proposed construction projects were needed, reasonable, and justified; 3) whether there was record evidence supporting a finding that \$2.6 million in proceeds from the County of San Bernardino were invested in F-10 Plant; and 4) whether there were circumstances warranting San Gabriel's deviation from Standard Practice U-16 concerning working cash. (D.05-08-041, Ordering Paragraph 2.)

Issues such as whether San Gabriel met its burden of proof regarding its request for a rate increase and whether proposed construction projects were needed, reasonable, or justified, are basic and integral issues in a rate case and should have been thoroughly analyzed before the decision was issued. By issuing D.05-08-041, the Commission found that the earlier decision was deficient in the four areas outlined above. Thus, it is preferable to have a fresh "eye" oversee the rehearing of the disputed issues outlined

above given the inadequacies of the earlier decision. ALJ Barnett will provide a much-needed new and impartial hearing of the rehearing issues.

#### **IV. RESULTS FROM THE REHEARING AND NEW APPLICATION WILL CAUSE NOTICE ISSUE PROBLEMS WITH CUSTOMERS AND THEIR RATES**

San Gabriel is obligated to provide notice to its customers of its rates. Section 454(a) of the PU Code requires utilities to “furnish to its customers affected by the proposed rate change notice of its application to the commission for approval of the new rate.”

Also, Rule 24 of the Commission’s Rules of Practice and Procedure requires utilities to provide notice “...after the filing of an application to increase any rate of charge,...shall furnish to its customers affected by the proposed increase notice of its application either by mailing such notice...”

San Gabriel is obligated to notify its customers of rate changes, but with the rehearing and the new rate application running simultaneously, it cannot properly notify its customers of the rates they should expect. The new application is based on information from the last rate proceeding, which is now subject to rehearing. Thus, the new application is based on information that is likely to be invalid after the rehearing process is concluded. Additionally, if both proceedings occur simultaneously, consumers will be confused regarding the rates they are likely to end up paying after the conclusion of the Commission’s various proceedings involving San Gabriel.

#### **V. THE RATE CASE PLAN FOR SAN GABRIEL SHOULD BE SUSPENDED UNTIL THE REHEARING PROCESS IS COMPLETED**

San Gabriel’s Petition for Modification does not address how the rehearing would affect the new rate application, except to argue that consolidation makes it doubtful that the new rate case “can be kept on track toward a timely decision.” Achieving a timely decision will be only one among many problems the Commission and San Gabriel will face if the rehearing is not decided before the new rate case application proceeds any further.

San Gabriel's current rate application is based on the results of a decision that will likely be substantially modified pursuant to D.05-08-041. As filed, San Gabriel's application is based on a substantial amount of erroneous information and assumptions because some of the information, assumptions, and the resulting rate impacts of San Gabriel's application are subject to substantial revisions. San Gabriel's new rate case application should not be considered by the Commission in its current form. The Commission should suspend the rate case plan schedule for this application and require San Gabriel to file a new proposed application once a decision has been rendered in the rehearing proceeding.

As the rehearing decision notes, Public Utilities Code ("P.U. Code") § 454 requires a public utility to show that its rate increase request is justified. The utility has the burden of proof to demonstrate the reasonableness of its request. A utility must show by "clear and convincing evidence, the reasonableness of all the expenses it seeks to have reflected in rate adjustments." (D.05-08-041, p. 8, *citing Re Southern California Edison Company* (1983) 11 Cal.P.U.C.2d 474, 475 (D.83-05-036.)) The Commission expects the utility to make "an affirmative showing. . . in support of all elements of its application." (*Id.* p. 9) It is the utility's "direct showing that must provide the clear and convincing evidence" that its rate request is justified, (*Id.* at p. 9, *citing Re Application of Southwestern Gas Corporation* (2004) \_\_\_ Cal.P.U.C.2d \_\_\_, D.04-03-034, at 6., emphasis added.)

San Gabriel's application does not meet these requirements. San Gabriel's current application is no longer based on accurate numbers and cannot provide clear and convincing evidence in support of its rate increase request because items such as revenues, ratebase, plant in service, accumulated depreciation, accumulated deferred income taxes, depreciation expense, property taxes, and income taxes are either based on D.04-07-034 or are affected by D.04-07-034, which is now subject to rehearing.

Once the rehearing is concluded, San Gabriel should file a new revised application and the Commission can consider San Gabriel's new rate request. Once the rehearing process is complete and San Gabriel has had an opportunity to file a new revised

application, ORA will be prepared to offer a detailed listing of the issues raised by the revised application.

Having accurate numbers for revenues, ratebase, plant in service, accumulated depreciation, accumulated deferred income taxes, depreciation expense, property taxes, and income taxes are vital to an analysis of a new rate application. Many of these issues will be substantially affected by D.04-07-034, which is now subject to rehearing. The rehearing and the new rate application cannot proceed simultaneously without causing great confusion and inefficiency. The Commission should issue a decision in the rehearing first before proceeding with the new rate application. San Gabriel cannot ignore the rehearing's substantial ramifications that have nothing to do with achieving a timely decision in its new rate application.

## **VI. SAN GABRIEL'S "DECONSOLIDATION" OF THE TWO PROCEEDINGS ARGUMENTS ARE INVALID**

San Gabriel cites four reasons why "deconsolidation" of the two proceedings is appropriate: 1) the rehearing issues differ from the new rate application; 2) the procedures applicable to the new rate application differ from the last rate application, whose decision is now subject to rehearing; 3) the rehearing impacts the rate plan for the new rate application; and 4) consolidation of the rehearing and the new rate application wrongly allows ALJ Patrick to be removed from the proceeding.

As explained earlier the rehearing issues do not differ substantially from the new rate application because many of the underlying assumptions and recorded data in the new application are predicated on the Commission's findings in D.04-07-034, which is the subject of the rehearing.

It is true the procedures applicable to the new rate application differ from the last rate application, now subject to rehearing, but the procedures themselves differing do not overcome the fact that the existing new rate application is inherently defective. It substantially relies upon assumptions and recorded data from the last rate application.

And as explained earlier, San Gabriel's concerns over keeping the rate plan on schedule for the new rate application is only one of many problems the Commission and

San Gabriel will face if the rehearing is not decided before the new rate case application proceeds any further.

Lastly, as explained earlier as well, San Gabriel's argument that the consolidation of the rehearing and the new rate application wrongly allows ALJ Patrick to be removed from the proceeding is false because ALJ Patrick's departure allows for the opportunity to rehear the issues of A.02-11-044 with a new decision-maker.

## **VII. CONCLUSION**

The Commission should deny San Gabriel's Petition for Modification because it violates Rule 47(b) by failing to offer proposed language modifying the decision. Moreover granting San Gabriel's request to retain ALJ Patrick for the rehearing process is likely to lead to even more protracted delay of this case given the inadequacies of D.04-07-034. A new, impartial ALJ is needed to render a revised decision on rehearing.

Sequencing this proceeding so that the rehearing will be completed before review of an updated new rate application begins, solves San Gabriel's "notice issues" with its customers concerning their rates and prevents the confusion and inefficiency of analyzing the new rate case's information and assumptions, which are subject to substantial modification by the rehearing.

Respectfully submitted,

/s/ SELINA SHEK

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September 28, 2005



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**RESPONSE TO SAN GABRIEL WATER COMPANY’S PETITION FOR MODIFICATION OF DECISION 05-08-041 OF THE OFFICE OF RATEPAYER ADVOCATES in A.02-11-044/A.05-08-021**” by using the following service:

[ X ] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on September 28, 2005 at San Francisco, California.

/s/ IMELDA TURBANADA

Imelda E. Turbanada

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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